

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3

4 GALINA SEEBROOK; MARIA ISABEL
5 BELTRAN; NICOLLE DISIMONE; and
KRISTEN HARTMAN,

No. C 11-837 CW

ORDER DIRECTING
PARTIES TO FILE A
JOINT LETTER BRIEF

6 Plaintiffs,

7 v.

8 THE CHILDREN'S PLACE RETAIL
STORES, INC.,

9 Defendant.

10 _____/
11 On May 14, 2013, Plaintiffs Galina Seebrook, Maria Isabel
12 Beltran, Nicolle DiSimone, Kristen Hartman and Mario Arellano
13 filed a motion for preliminary approval of the revised class
14 action settlement in this case. Docket No. 65. The proposed
15 settlement would provide both coupon and injunctive relief to
16 class members.

17 On May 15, 2013, the Ninth Circuit Court of Appeals issued a
18 ruling in In re HP Inkjet Printer Litigation, 2013 U.S. App. LEXIS
19 9744, reversing the district court's grant of final approval to a
20 class action settlement and award of attorneys' fees for violation
21 of the coupon settlement provision of Class Action Fairness Act
22 (CAFA), 28 U.S.C. § 1712. The court clarified that, under
23 § 1712(c), which in part incorporates § 1712(a), the "general
24 rule" is, "If a settlement gives coupon and equitable relief and
25 the district court sets attorneys' fees based on the value of the
26 entire settlement, and not solely on the basis of injunctive
27 relief, then the district court must use the value of the coupons
28

1 redeemed when determining the value of the coupons part of the
2 settlement." Id. at *32. The court stated, "Because the
3 settlement agreement specifies that no coupons may issue until
4 after entry of a final judgment, it would have been impossible for
5 the district court to calculate the redemption value of the
6 coupons as required by § 1712(a)." Id. at *39.

7 Under In re HP Inkjet Printer Litigation, it appears that,
8 unless counsel bases its request for attorneys' fees solely upon
9 the equitable relief obtained, the Court will be unable to resolve
10 fully the issue of attorneys' fees until after the redemption
11 period for the coupons has passed. Further, the agreement here
12 has a similar provision to the one at issue in that case. See
13 Stonebarger Decl., Ex. 1 (Settlement Agreement) ¶¶ 1.12, 3.12
14 (providing that Defendant will distribute the merchandise
15 certificates as soon as practicable, but no more than sixty days,
16 after the "Final Settlement Date," a date that is defined to
17 necessarily take place after the entry of judgment). However, the
18 Settlement Agreement here also appears to allow the Court to
19 approve or change any dates or time periods that it sets forth.
20 Id. at ¶ 5.3. Thus, in order to comply with the dictates of In re
21 HP Inkjet Printer Litigation, the Court is inclined to consider
22 first the final approval of the settlement agreement but to wait
23 to consider separately the motion for attorneys' fees until after
24 the coupons have been distributed and the redemption period has
25 passed.

26 The Court also notes that the parties have not changed
27 certain terms of the settlement that the Court expressed concern
28 with at the prior hearing, including that there is no monetary

1 recovery given directly to the class, such that the class members
2 must conduct further business with Defendant in order to obtain
3 any benefit; the coupons given cannot be used in conjunction with
4 other discounts or sales, which reduces their value to the class
5 members; and the coupons cannot be used on Defendant's website, so
6 the class members must travel to Defendant's stores in order to
7 use them online. Notwithstanding these concerns, the Court is
8 inclined to find that, other than the issue under CAFA, the
9 settlement falls within the range of possible approval as fair,
10 adequate and reasonable, such that notice to the Class Members is
11 appropriate, and grant Plaintiffs' motion for preliminary
12 approval.

13 The parties shall meet and confer on the CAFA issue. Within
14 seven days of the date of this Order, the parties shall file a
15 joint letter brief responding to this Order. The parties shall
16 address the issue raised by the Court under In re HP Inkjet
17 Printer Litigation and whether the Court has the authority under
18 the settlement agreement to make the change that it has proposed.
19 They also may explain why that decision is not applicable to the
20 fees motion here or suggest another possible resolution to the
21 issue.

22 The Court notes that, because the ultimate award for
23 attorneys' fees may be lower than the parties had anticipated
24 during their negotiations due to the subsequent Ninth Circuit
25 opinion, Defendant may be willing to renegotiate the recovery made
26 available to class members to address some of the Court's concerns
27 about the structure of this settlement. If the parties believe
28 that further negotiation is warranted at this time, in lieu of the

1 joint letter brief addressed above, the parties may file a status
2 report with the Court within seven days of the date of this Order
3 providing proposed deadlines for the additional settlement
4 discussions and for the joint letter brief or a motion for
5 preliminary approval of a further revised settlement agreement.

6 IT IS SO ORDERED.

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8 Dated: 5/23/2013


CLAUDIA WILKEN
United States District Judge